

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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United States of America,

Plaintiff,

**ORDER**

19-CV-02456 (DG) (JMW)

-against-

J. Ronald Holland, a/k/a “James R. Holland,”

Defendant.

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DIANE GUJARATI, United States District Judge:

Plaintiff United States of America commenced this action on April 26, 2019 in connection with alleged unpaid tax liabilities of Defendant J. Ronald Holland, a/k/a “James R. Holland.” *See* Complaint, ECF No. 1. Familiarity with the detailed procedural history and background of this action is assumed herein. As particularly relevant here, and in summary: Plaintiff has for a considerable period of time been seeking to depose non-party David Risk on issues relevant to this action, including as to Mr. Risk’s relationship with Mr. Holland and as to whether or not Mr. Holland – who passed away during the pendency of this action – had a will; Plaintiff moved to compel Mr. Risk’s deposition, which motion was granted by Magistrate Judge James M. Wicks by Order dated July 9, 2023, ECF No. 100; Mr. Risk did not appear for a deposition that had been scheduled for August 8, 2023 (which was a rescheduled date); and Plaintiff thereafter moved for an order directing Mr. Risk to show cause as to why he should not be held in contempt for failure to comply with a deposition subpoena and with the July 9, 2023 Order compelling his deposition attendance and why he should not be ordered to reimburse travel costs and court reporter fees for the deposition that he did not attend on August 8, 2023, *see* August 11, 2023 Motion, ECF No. 105.

### The September 11, 2023 Report and Recommendation

On September 11, 2023, Judge Wicks issued a Report and Recommendation (“R&R”) with respect to Plaintiff’s August 11, 2023 Motion. *See* R&R, ECF No. 107. In the R&R, Judge Wicks (1) set forth the applicable legal standard for contempt; (2) certified the relevant facts; and (3) made certain recommendations to the undersigned. *See generally* R&R. More specifically, Judge Wicks certified that a *prima facie* case for contempt against Mr. Risk has been established, setting forth the “protracted history” of Plaintiff’s efforts to depose Mr. Risk and of Mr. Risk’s responses to those efforts, including that Mr. Risk did not appear for the scheduled August 8, 2023 deposition, *see* R&R at 3-6, and Judge Wicks recommended that Mr. Risk be ordered to demonstrate good cause in writing as to why he should not be held in contempt and that, unless Mr. Risk demonstrated good cause in writing by a date set by the undersigned, Mr. Risk should be held in contempt for his failure to comply with the July 9, 2023 Order to appear at his deposition and produce the requested documents, *see* R&R at 2, 7.

No objection to the R&R has been filed and the time for filing objections has passed. *See* R&R at 7; *see generally* docket. Although, in the absence of objections, clear error review applies here, the Court nevertheless has reviewed the R&R *de novo*. Upon such review, the Court adopts the R&R in its entirety. *See* 28 U.S.C. § 636(b)(1).<sup>1</sup>

### The November 2023 and December 2023 Orders to Show Cause

By Order to Show Cause dated November 2, 2023, the Court ordered Mr. Risk to show cause in writing, by November 20, 2023, as to why he should not be found in contempt of court for failing – as detailed in the R&R – to comply with Judge Wicks’s July 9, 2023 Order

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<sup>1</sup> Although he did not file any objections to the R&R, Mr. Risk filed a letter motion to quash on September 22, 2023, *see* ECF No. 111, which Plaintiff opposed, *see* ECF No. 114, and which Judge Wicks denied by Order dated October 6, 2023, *see* ECF No. 115.

compelling Mr. Risk's deposition attendance. *See* November 2, 2023 Order to Show Cause. Mr. Risk did not comply with – or respond in any way to – the November 2, 2023 Order to Show Cause. *See generally* docket.

By Order to Show Cause dated December 4, 2023, the Court directed Mr. Risk to appear before the Court on December 27, 2023 to show cause as to why he should not be found in contempt of court for failing to comply with Judge Wicks's July 9, 2023 Order compelling Mr. Risk's deposition attendance. *See* December 4, 2023 Order to Show Cause.

Mr. Risk did not appear at the proceeding that was scheduled for December 27, 2023. *See* December 27, 2023 Minute Entry. However, because Mr. Risk had filed a letter relating to, *inter alia*, the proceeding that was scheduled for December 27, 2023, which letter was received by the *Pro Se* Office of the Court on December 26, 2023 but not docketed until December 28, 2023 and accordingly not received or reviewed by the undersigned prior to the December 27, 2023 proceeding, out of an abundance of caution, the Court, by Order to Show Cause dated December 28, 2023, afforded Mr. Risk a final opportunity to show cause in writing, by January 5, 2024, as to why he should not be found in contempt of court for failing to comply with Judge Wicks's July 9, 2023 Order. *See* December 28, 2023 Order to Show Cause; Letter, ECF No. 122; *see also* Duplicate Letter, ECF No. 124. The Court also directed Mr. Risk to provide an updated address to the Court by January 5, 2024. *See* December 28, 2023 Order to Show Cause.

On January 16, 2024, Mr. Risk filed a letter, dated January 3, 2024, indicating that the letter is “in response to an email [he] recently received from DOJ's Sarnell dated December 28, 2023, in which [Mr. Risk is] yet once again being asked to show cause.” *See* ECF No. 127. In his January 3, 2024 letter, Mr. Risk, *inter alia*, discusses his health, referencing “Long Covid.” *See* ECF No. 127 at 1-2. In his January 3, 2024 letter, Mr. Risk also indicates that he has

“relocated out of state,” but Mr. Risk fails to provide an updated address to the Court – indeed, he lists his return address only as: “David Risk, Formerly of: 47 Old Neck Road South, Center Moriches, NY 11934.” *See* ECF No. 127 at 1.

Mr. Risk’s Contempt of Court

Upon consideration of the record, the Court has determined that, although Mr. Risk has filed submissions since the issuance of the November 2, 2023 Order to Show Cause, his submissions – whether considered individually or collectively – fail to show cause as to why he should not be found in contempt of court for failing – as detailed in the R&R – to comply with Judge Wicks’s July 9, 2023 Order compelling Mr. Risk’s deposition attendance. *See* ECF Nos. 122, 124, 127; R&R at 2-3 (setting forth the applicable legal standard for contempt); *see also* ECF No. 115 (Judge Wicks noting, in October 6, 2023 Order denying Mr. Risk’s September 22, 2023 motion to quash, that Mr. Risk’s “gamesmanship and near acrobatic attempts to avoid the deposition must now come to an end”). Notably, the record does not reflect that Mr. Risk is incapable of attending a deposition regardless of its format, length, or location.

Accordingly, Plaintiff’s August 11, 2023 Motion, ECF No. 105, is GRANTED and it is hereby ORDERED that:

- (1) David Risk is found in contempt of court for failing to comply with Judge Wicks’s July 9, 2023 Order compelling Mr. Risk’s attendance at a deposition, which deposition (subsequently) was scheduled for August 8, 2023;
- (2) David Risk shall appear for a deposition by February 26, 2024. Mr. Risk shall contact Trial Attorney Bradley A. Sarnell by email at [bradley.a.sarnell@usdoj.gov](mailto:bradley.a.sarnell@usdoj.gov) or by telephone at (202) 305-5427 to schedule Mr. Risk’s deposition. Plaintiff shall make reasonable efforts to accommodate any well-documented

health-related restrictions with respect to Mr. Risk's deposition attendance. Any dispute between Plaintiff and Mr. Risk as to the format, length, or location of the anticipated deposition shall be directed to Judge Wicks promptly.

- (3) Should David Risk fail to appear for a deposition by February 26, 2024, he shall be assessed a sanction of \$100 per day beginning on February 27, 2024 and continuing until such time as he appears for a deposition, which sanction shall be payable to the Clerk of Court of the United States District Court for the Eastern District of New York.
- (4) Plaintiff shall notify the Court when David Risk's deposition has been completed and shall do so by letter filed on the docket within 24 hours of completion of the deposition.
- (5) David Risk shall be responsible for reimbursing the costs of the court reporter and of travel for Plaintiff's attorney to and from Central Islip for the deposition scheduled for August 8, 2023. Plaintiff shall submit documentation supporting its request for these costs by February 2, 2024.
- (6) Plaintiff is directed to serve a copy of this Order on David Risk at the address reflected for him on the docket. Plaintiff is further directed to email a copy of this Order to Mr. Risk at the email address provided by Mr. Risk in his filings at ECF Nos. 122 and 127. Plaintiff shall file proof of service on the docket by

February 2, 2024.<sup>2</sup>

SO ORDERED.

/s/ Diane Gujarati  
DIANE GUJARATI  
United States District Judge

Dated: January 26, 2024  
Brooklyn, New York

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<sup>2</sup> On January 10, 2024, Plaintiff filed a proposed contempt order, by which Plaintiff, *inter alia*, requests that, contingent on the occurrence of certain events, the Court issue an arrest warrant for Mr. Risk. *See* ECF No. 125 at 2. Plaintiff's request for the issuance of an arrest warrant is denied without prejudice to renewal after February 26, 2024.